

1 WO  
2  
3  
4  
5

6                   **IN THE UNITED STATES DISTRICT COURT**  
7                   **FOR THE DISTRICT OF ARIZONA**

8  
9 Efrain Terrazas and Maria Terrazas,         )      No. CV 08-0600-PHX-DGC  
husband and wife,                                  )  
10    )  
Plaintiffs,    )  
11    )  
vs.    )  
12 Dole Fresh Vegetables, Inc.,                    )  
13    )  
Defendant.    )  
14    )  
15 \_\_\_\_\_)

16                   Plaintiffs Efrain Terrazas and Maria Terrazas filed suit against Dole Fresh Vegetables,  
17 Inc., asserting various causes of action stemming from Dole's termination of Mr. Terrazas'  
18 employment. Dkt. #1. Dole seeks to dismiss or stay this case and to compel arbitration  
19 because Plaintiffs' claims have not gone through the mandatory grievance procedures  
20 outlined in a collective bargaining agreement ("CBA") that applies to disputes brought by  
21 employees. Dkt. #2. Plaintiffs oppose the motion because (1) Plaintiffs' complaint contains  
22 state law claims not governed by the CBA, (2) Mrs. Terrazas is not a party to the CBA, (3)  
23 Dole repudiated the grievance process, and (4) Plaintiffs are unable to obtain equitable relief  
24 by way of the grievance process. Dkt. #7. The Court will dismiss the case without prejudice.

25                   The CBA provides that a grievance – defined as a "dispute or controversy involving  
26 the interpretation or application of the terms and provisions of the [CBA]" – first must be  
27 communicated by an employee to an immediate supervisor or other Dole representative, and  
28 that the employee, a union representative, and a supervisor designated by Dole should then

1 attempt to resolve the matter. Dkt. #2-2 at 1. Grievances unresolved by this step must be  
2 submitted in writing, and the employer must respond within fifteen days or present the  
3 written grievance to a grievance committee. *Id.* at 1-2. If the grievance still remains  
4 unresolved, the employee may request arbitration. *Id.* at 2.

5 Plaintiffs do not dispute that Mr. Terrazas has a “grievance” within the meaning of  
6 the CBA or that the grievance procedures were not followed. Dkt. #7. Plaintiffs also  
7 concede that federal law covers the CBA. *Id.* at 2. Plaintiffs contend, however, that Dole’s  
8 motion should be rejected because the complaint includes state law claims that fall outside  
9 of the CBA’s reach. *Id.* But the plain language of the grievance procedures does not  
10 differentiate among grievances that may lead to federal or state claims. The CBA requires  
11 that a grievance arising out of the CBA which governed Mr. Terrazas’ employment be  
12 resolved through the grievance process. Dkt. #1-2.

13 Plaintiffs contend that the motion should be denied because the complaint contains  
14 claims brought independently by Mrs. Terrazas, who is not governed by the CBA. This  
15 argument does not, however, provide a basis for avoiding Mr. Terrazas’ obligation to comply  
16 with the CBA. He is still bound by the grievance procedures, and it would make little sense  
17 to proceed in this Court with his wife’s claims while forcing him to assert his virtually  
18 identical claims in arbitration. One purpose of requiring exhaustion is to promote the speedy  
19 and efficient resolution of disputes. *See SEC v. G. C. George Securities, Inc.*, 637 F.2d 685,  
20 688 n.4 (9th Cir. 1981) (exhaustion promotes judicial economy). Another is to resolve  
21 disputes before incurring the cost and time of a lawsuit. *See Ong v. Cleland*, 642 F.2d 316,  
22 320 (9th Cir. 1981) (one purpose of exhaustion is to avoid institution of lawsuits). Moreover,  
23 allowing an employee to avoid the grievance procedures merely by naming his or her spouse  
24 as a co-plaintiff would defeat the purposes of the grievance procedures, the federal law  
25 recognizing such procedures, and the exhaustion doctrine. The Court exercises discretion  
26 when considering exhaustion requirements, and concludes in this case that Mr. Terrazas  
27 should be required to comply with his CBA obligations.

28

1 Plaintiffs assert that Dole repudiated the grievance process when a union  
 2 representative stated that Dole “would not believe” the Plaintiffs’ allegations. *Id.* at 3. In  
 3 support of their argument, Plaintiffs cite to *Sidhu v. Flecto Company Inc.*, 279 F.3d 896 (9th  
 4 Cir. 2002), a case which stands for the proposition that an employee need not exhaust an  
 5 employer’s grievance procedures when the employer refuses to honor the procedures. *Id.* at  
 6 899 (the employee “could not exhaust the grievance procedures because [the employer] took  
 7 the repeated position that the grievance procedures did not govern this dispute.”). Here, it  
 8 is Plaintiffs who are refusing to go through the grievance procedures and Dole that argues  
 9 the procedures should be applied. The *Sidhu* court recognized that the repudiation doctrine  
 10 is an equitable one, prohibiting an employer from repudiating the grievance process and then  
 11 arguing that an employee did not take advantage of that process. *See id.* at 898. Plaintiffs  
 12 have not shown that Defendant should be estopped in this case. A single union  
 13 representative’s subjective opinion regarding Defendant’s possible reaction to the dispute  
 14 does not constitute Defendant’s repudiation of the grievance process.

15 Finally, Plaintiffs claim that they would not be able to obtain equitable relief in  
 16 arbitration. Dkt. #7. The prayer for relief in their complaint, however, does not seek  
 17 equitable relief. Dkt. #1-2 at 14.

18 The Court will dismiss Plaintiffs’ case without prejudice to allow the parties to  
 19 address the employment dispute under the grievance procedures established by the CBA. *See*  
 20 *Herman v. United Bhd. of Carpenters & Joiners of Am., Local Union No. 971*, 60 F.3d 1375,  
 21 1379 (9th Cir.1995) (before bringing suit, exhaustion of grievance procedures is required).<sup>1</sup>

22 **IT IS ORDERED:**

- 23 1. Defendant’s motion (Dkt. #2) is **granted**. This action is dismissed without  
 24 prejudice.

---

25  
 26  
 27 <sup>1</sup>Defendant’s reply memorandum asks the Court to award attorneys’ fees (Dkt. #8 at  
 28 4-5), but the request does not comply with the Court’s procedures for seeking such fees (*see*  
 LRCiv 54.2). Nor should such a request be made for the first time in a reply memorandum.

2. The clerk is directed to terminate this action.

DATED this 23rd day of May, 2008.

Daniel G. Campbell

David G. Campbell  
United States District Judge